

MONA S. CARTEL
Claimant

MIMOSA ARMS, d/b/a/ KEY MANAGEMENT CO.
Respondent

AMERICAN HOME ASSURANCE, c/o AIG
Insurance Carrier

Respondent contends that claimant has a history of prior neck problems dating back to 1994 and 1996. Respondent argues that claimant has had two competent medical opinions which state that she does not need additional medical treatment for her alleged neck injury.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date and considering the parties' arguments, the Board finds and concludes:

The issue raised by claimant is not subject to review from a preliminary hearing order. Accordingly, this appeal should be dismissed.

This is an appeal from a preliminary hearing order. Consequently, not every alleged error is subject to review. The Board can review preliminary hearing orders in which an ALJ has exceeded his or her jurisdiction.¹ Moreover, the Board has specific authority to review the preliminary hearing issues listed in K.S.A. 44-534a, which are:

- (1) did the worker sustain an accidental injury,
- (2) did the injury arise out of and in the course of employment,
- (3) did the worker provide the employer with timely notice and with timely written claim, and
- (4) do certain other defenses apply.

The term "certain defenses" refers to defenses that dispute the compensability of the injury under the Workers Compensation Act.²

The issues of whether a worker needs ongoing medical treatment or whether the employer is failing to provide medical treatment are not jurisdictional issues listed in K.S.A. 44-534a that are subject to review from a preliminary hearing order. Those issues do, however, comprise questions of law and fact over which an ALJ has the jurisdiction to determine at a preliminary hearing.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test or jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.³

¹ K.S.A. 44-551(b)(2)(A).

² *Carpenter v. National Filter Service*, 26 Kan. App. 2d 672, 994 P.2d 641 (1999).

³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

Claimant's argument that the ALJ exceeded his jurisdiction by failing to appoint a doctor to treat claimant is without merit. At a preliminary hearing, an ALJ has the authority to determine whether an injured worker is in need of additional medical treatment, or instead, has reached maximum medical improvement. And, if it is the latter, the ALJ may deny additional treatment.

WHEREFORE, the Appeals Board dismisses this appeal.

IT IS SO ORDERED.

Dated this ____ day of November 2004.

BOARD MEMBER

c: Stephen J. Jones, Attorney for Claimant
Christopher J. McCurdy, Attorney for Respondent and American Home Assurance
c/o AIG
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director